(2)

CF0000059394

Checked & Verified, 2013

Division Bench (riminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 1515 Of 1996

APPELLANT ACCUSED (In jail) : Trinath Pandey S/o Shri Lalandhar Pandey, aged about 45 years, Old Geedam Naka, Jagdalpur district Bastar (MP)

Versus

RESPONDENT PROSECUTOR : The State of Madhya Pradesh, through Officer-in-charge, Police Station Bodhghat District Bastar (MP)

Conviction	Sentence
U/Section 302 I.P.C.	Life Imprisionment

MEMORANDUM OF APPEAL UNDER SECTION 374 (2) OF Cr.P.C.

XI-HC-22

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A-1515/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1515 OF 1996

Appellant : Trinath Pandey

Vs.

Respondent : State of Madhya Pradesh

Smt. Kiran Jain, learned counsel for the appellant.

Shri U.N.S.Deo, learned G.A. with Shri Akhil Mishra, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(09.03.2006)

Per L.C.BHADOO, J

By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellant has questioned the legality and correctness of the impugned judgment dated 10th August 1996 passed by Additional Sessions Judge, Jagdalpur, Bastar in S.T. No. 144/96 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life.

2. Case of the prosecution, in brief, is that PW-4 Pannulal lodged the First Information Report P-4 on 05.03.1996 at about 15.10 hours in the Police Station – Bodhghat to the effect that on that date he was sitting in front of his house, he heard the screams "save, save" on which he came

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out and saw that there was altercation between accused Trinath Pandey and Jabbar. Accused Trinath attacked Jabbar with axe on his head as a result of which Jabbar fell down and started raising cries "save, save". Thereafter, Trinath again assaulted on the head of Jabbar with axe. He rushed toward that side to save Jabbar but Trinath ran away and he saw that Jabbar was lying dead in the verandah. Blood was oozing out of the head. Receiving this report Station House Officer registered the crime No. 117/96 for the offence under Section 302 of the IPC, left for the scene of occurrence and prepared the Panchanama P-7 of the dead body of Jabbar after giving notice to the Panchas. He took into possession the weapon of offence – axe from the accused Trinath under P-5. He also took into possession the bloodstained soil and plain soil from the place of occurrence under P-6. Dead body of Jabbar was sent for postmortem examination to Maharani Hospital, Jagdalpur under P-9 where Dr. K. Vinay Kumar conducted postmortem on the body of Jabbar and prepared the postmortem report P-9. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Jagdalpur who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge, received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused/appellant examined 5 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him the in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing counsel for the

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respective parties convicted and sentenced the accused/appellant as mentioned in paragraph -1 of this judgment.

4. We have heard Smt. Kiran Jain, learned counsel appearing on behalf of the accused/appellant and Shri U.N.S.Deo, Govt. Advocate with Shri Akhil Mishra, Panel Lawyer on behalf of the State.

5. Homicidal death of deceased Jabbar is not in dispute.

6. As far as involvement of the accused/appellant in committing the murder of Jabbar is concerned, PW-4 Pannulal, the main witness who lodged the FIR in the police station has not supported the case of the prosecution. He has stated that on hearing the cries that Jabbar has died, he went towards the house of Jabbar and saw that Jabbar was already dead. He has further stated that the accused was on the road and there was crowd. He has stated that he did not see the accused assaulting Jabbar with axe and he had also not heard the voice of accused Trinath. This witness has been declared hostile by the prosecution. He has further stated that though the memo of P-3 bears his signature but the axe was not taken into possession from the accused in his presence, therefore, this witness has not supported the prosecution case. PW-2 Shankar in his evidence has stated that he saw the accused assaulting Jabbar with axe but in his cross-examination he has stated that he did not disclose the above facts to the police at the time of giving evidence. He has further stated that he does not know as to why all these things are not written in his case diary statement D-1. From the perusal of the case diary statement D-1 it is evident that this witness had not stated before the police that he witnessed the crime in question. Similar is the evidence of

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PW-3 Lakhma who in his examination-in-chief has stated that he saw the accused attacking deceased with axe. However, in paragraph – 3 of his cross-examination he has stated that he did not witness the assault and only after the incident was over, he saw that Jabbar was already dead. Moreover, in the police station in his case diary statement D-2 he has not stated that he witnessed the accused attacking the deceased with axe. Therefore, PW-2 Shankar and PW-3 Lakhma have made improvements in their Court evidence in material particulars and as such their evidence does not inspire confidence as no witness has supported the prosecution case that they witnessed the accused assaulting deceased Jabbar.

7. As far as recovery of the axe in question from the accused is concerned, there is no report of the Serologists or Forensic Science Laboratory on record to the effect that the axe in question which was taken into possession from the accused was stained with blood and that too of the blood group of deceased Jabbar. Therefore recovery of the axe in question from the accused is also of no consequence.

8. In view of the above, we are of the considered opinion that the finding of the trial court is not based on legal and clinching evidence and as such the same cannot be sustained. Accordingly, the accused is acquitted of the charge under Section 302 of the IPC and the sentence imposed upon him is set aside.

9. In the result, the appeal succeeds and the same is allowed. The appellant be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge